MASTER AND SERVANT—AGREEMENT RELEASING MASTER FROM LIABILITY FOR NEGLIGENT INJURY VOID.—Plaintiff was the employee of defendant, an express company. The contract of employment stipulated that the plaintiff assumed all risk of injury or accident to himself arising from any cause whatsoever. Plaintiff was injured because of the negligence of the defendant in furnishing an unsafe place of employment. *Held,* that the contract was void on grounds of public policy in so far as it assumed to relieve the defendant from liability for its own negligence. *Johnston* v. *Fargo* (1906), — N. Y. —, 77 N. E. Rep. 388.

This is a question upon which the New York court had not previously pronounced itself and decisions involving it are not numerous. It is settled that in its relations with the public as common carrier a railroad company cannot escape liability for its own negligence. *Railroad Co.* v. *Lockwood,* 17 Wall. 375. On the other hand acting as a mere private carrier it may thus escape liability for injuries to gratuitous passengers. Here but a few individuals are concerned and public policy does not demand this restriction upon the freedom of contract. *Nells* v. *N. Y. Cent. Ry. Co.,* 24 N .Y. 181; *Bissell* v. *N. Y. Cent. Ry. Co.,* 25 N. Y. 442. Also a railroad company may protect itself by contract from liability to an employee of an express company. *Baltimore & Ohio Ry. Co.* v. *Voigt,* 176 U. S. 498. The positions of an employee of an express company and an employee of the railway company are not identical, but much of the reasoning of the court in the last case cited contravenes the doctrine of the principal case. *Griffiths* v. *Earl of Dudley,* 9 Q. B. Div. 357; *W. & A. Ry. Co.* v. *Bishop,* 50 Ga. 465, and *W. & A. Ry. Co.* v. *Strong,* 52 Ga. 461, sustaining the validity of contracts like the one in the principal case. In *Griffiths* v. *Earl of Dudley, supra,* it is urged that a small class only of the public is concerned and the workingmen are amply able to make their own bargains. The reasoning in the two Georgia cases is similar, but in neither was the court's position on this question vital to the holding in the case. The principal case, however, is in accord with the weight of authority in this country. *Ry. Co.* v. *Spangler,* 44 Ohio St. 471; *Kansas Pacific Ry. Co.* v. *Peavey,* 29 Kan. 169; *Roesner* v. *Hermann,* 8 Fed. Rep. 782; *S. R. & Ft. S. Ry. Co.* v. *Eubanks,* 48 Ark. 460; *Hissong* v. *R. & D. Ry. Co.,* 91 Ala. 514. In the Ohio case the contract attempted to free the employer from liability imposed by the common law of the state, and in the Alabama case, from liability imposed by statute. Text writers are at variance. GREENHOOD ON PUBLIC POLICY, p. 528, agrees unreservedly with the doctrine of the principal case, citing *Roesner* v. *Hermann, supra.* BAILEY'S MASTER'S LIABILITY FOR INJURIES TO SERVANT, Chap. XXIII, contends that legislation cannot arbitrarily declare contracts void either directly or by implication. It is the province of the court to finally determine what the public policy of a state is. The court in the Ohio case above cited was then consistent, but the Alabama court was not. It virtually decided that the common law of the state was against public policy. The employed class constitute a large proportion of our population. The public is interested in the preservation of the lives and health of its members. Like the public and the common carrier the employee and the employers no longer stand upon an equal footing. The interests of

workingmen are more and more being protected by factory laws and employers' liability acts. The decision of the court in the principal case seems reasonable and in harmony with the policy of the times.

MASTER AND SERVANT—DEFECTIVE APPLIANCES—ASSUMPTION OF RISK—PROMISE TO REPAIR.—The plaintiff was an employee of the defendant. About ten o'clock he complained to the superintendent that the machine upon which he was working was unsafe. The superintendent replied, "You go right ahead and I will fix it for you at the noon hour." This he failed to do. At one o'clock the plaintiff knowing that the machine had not been repaired resumed work, and at three o'clock was injured. *Held,* that on these facts, the plaintiff was properly nonsuited. *Andrecsik* v. *New Jersey Tube Co.* (1906) — N. J. —, 63 Atl. Rep. 719.

A master owes to his servant certain well-recognized duties, among which is the duty to use due care to provide safe tools and machinery. On the other hand, "that to which a person assents is not in law esteemed an injury." BROOM LEG. MAX., p. 268. If a person enters or continues in an employment with knowledge actual or implied of the danger involved, he is deemed to have assumed the risk and consented to any injury that he may suffer therefrom. *Sullivan* v. *India Mfg. Co.,* 113 Mass. 396; *Appel* v. *Ry. Co.,* 111 N. Y. 550; *Dillenberger* v. *Weingartner,* 35 Vroom 292; BAILEY, MASTERS' LIABILITY TO SERVANTS, Chap. IX. If, however, the servant remains relying on the master's promise to repair, the risk is the master's. He has assumed it in consideration of the servant's remaining. *Stephenson* v. *Dunbar,* 73 Wis. 404; *Mfg. Co.* v. *Morrisey,* 40 Ohio St. 148. If the promise is general it is considered that the master has a reasonable time in which to fulfill it. If the servant remains after the lapse of a reasonable time, without the repairs having been made, he again assumes the risk. *Hough* v. *Ry. Co.,* 100 U. S. 213; *Dowd* v. *Erie Ry. Co.,* 41 Vroom 451; *Dunkerley* v. *Webendorfer Machine Co.,* 42 Vroom 60; *Counsel* v. *Hall,* 145 Mass. 468. It follows then necessarily, that if, as in the principal case, the parties themselves fix the time for the performance of the promise, the repairs not having been made within that time, the servant resumes the work at his own risk. LABATT, MASTER AND SERVANT, Vol. I, p. 1204. Very few cases seem to have arisen involving this question. The following, however, are directly in point and confirm the doctrine of the principal case: *Trotter* v. *Chattanooga Furniture Co.,* 101 Tenn. 257; *Albrecht* v. *Ry. Co.* (1901), 108 Wis. 530. There can be no question in such a case for the jury. "Ordinarily whether the servant has waived the neglect of the master and assumed the risk after a promise to repair is a question for the jury, yet it may have been given for such a length of time or with such conditions that the court can determine as a matter of law that its performance has been waived." BAILEY, MASTER'S LIABILITY FOR INJURIES TO SERVANTS, p. 209; *Stephenson* v. *Dunbar,* 73 Wis. 407.

MUNICIPAL CORPORATIONS—POWERS OF POLICE COMMISSIONERS—DISMISSAL OF OFFICER.—The charter of a city provides that the Board of Police Commissioners shall have power to prescribe rules and regulations for the government,